

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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VICTOR TAGLE,
Plaintiff,
vs.
LIEUTENANT BEAN, et al.,
Defendants.

Case No. 2:15-cv-01402-JAD-VCF

ORDER

This matter involves Plaintiff Victor Tagle's *pro se* civil rights action under 42 U.S.C. § 1983 against Defendants Jeremy Bean, Jennifer Nash, Kenneth Wing, and Ronald Oliver. Before the Court are (1) Tagle's "Motion for Issue of Summons on Record, Illegal Confiscation of Documents / Exhibits Physical / Emotional Stress Inflicted on Plaintiff due to Retaliation" (ECF No. 116), and (2) Defendants' Motion to Strike [ECF No. 117] Tagle's "Complaint in Regard: E-Mail & The People Who Handles It" (ECF No. 100). Tagle filed a Response to the Defendants' Motion to Strike. *See* ECF No. 119. The Defendants' filed a Reply. *See* ECF No. 123. The Court has reviewed the parties' filings. For the reasons stated below, the Court denies Tagle's request for relief and grants the Defendants' Motion to Strike.

I. Background

Plaintiff Victor Tagle is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”). Since 2003, Tagle has filed over 30 civil rights actions in the District of Nevada. On July 23, 2015, Tagle filed an *in forma pauperis* (“IFP”) application and complaint. *See* ECF No. 1. United States District Judge Jennifer Dorsey entered a screening order on March 28, 2016 allowing only Count 1 (First Amendment retaliation claim), Count 2 (supervisory-liability claim for excessive force), Count 3 (excessive force claim), and Count 4 (excessive force claim) of Tagle’s Complaint to proceed against

1 Defendants Nash, Bean, Wing, and Oliver.¹ *See* ECF No. 2 at 14. In August 2016, this Court granted
2 Tagle permission to proceed IFP under 28 U.S.C. § 1915 and LSR 1-1 of the Local Rules of Practice. *See*
3 ECF No. 36.

4 **II. Discussion**

5 As an initial matter, the Court advises Tagle to make sure that his filings are written clearly and
6 legibly, so that his positions are understood.
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8 **A. Motion for Issue of Summons on Record, Illegal Confiscation of Documents / Exhibits
Physical / Emotional Stress Inflicted on Plaintiff due to Retaliation (ECF No. 116)**

9 In this Motion, Tagle requests the following: (1) “Authorities’ and Courts’ Intervention” (2)
10 “Evidentiary Hearing” and (3) “Summons to Serve defendants.” *See* ECF No. 116 at 3-4.

11 Tagle’s Motion provides neither factual or evidentiary support, nor specific legal authority for his
12 requests. Instead, the Motion objects to a document entitled “Motion to Strike Affidavit in Support of
13 Cases and Request of Summons to Serve Defendants in Regard Illegal Confiscation of Exhibits and
14 Retaliation Physical Punishment et al.” *Id.* at 1. The Motion directs the Court to “document No 59 5/9/14,
15 3:16-cv-148 @ usdc.” *Id.* Although the Motion refers to another one of Tagle’s cases, the Court notes
16 that a similar motion to strike was filed in this case. *See* ECF No. 114.

17 Tagle requests this Court to issue summonses for individuals that are not Defendants in this case.
18 Tagle requests summonses for the following individuals: (1) the State of Nevada, (2) NDOC, (3) Warden
19 Renee Baker, (4) Carpenter (both wife and husband), (5) “increase on the \$20 copywork,” (6) Lieutenant
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23 ¹ The screening order also imposed a 90-day stay and the Court entered a subsequent order in which the
24 parties were assigned to mediation by a court-appointed mediator. *See* ECF Nos. 2, 9. The Office of the
25 Attorney General filed a status report indicating that settlement had not been reached and informed the
Court of its intent to proceed with this action. *See* ECF No. 34.

1 Olivas (both wife and husband), (7) six NDOC guards (Garrett, Gouvea, Vinsley, Bennett, Hoffman, and
2 Moone), (8) law library supervisor Pamela Feil, and (9) Email/Feil's supervisor Gilden. *See* ECF No. 116
3 at 3-4. Judge Dorsey, however, previously entered a screening order allowing this case to proceed only
4 on four counts against Defendants Nash, Bean, Wing, and Oliver. *See* ECF No. 2 at 14. Tagle does not
5 request summonses for these remaining defendants. *See* Fed. R. Civ. P. 4. The Court notes for clarity
6 that the Motion's request for a summons for an individual named "LT. Olivas" refers to NDOC Lieutenant
7 Valaree Olivas, not Lieutenant Ronald Oliver. *See* ECF Nos. 116 at 3-4; 105-2 at 2. Valaree Olivas is
8 not a defendant in this case; Ronald Oliver is. The Motion is denied.

9 If Tagle were seeking injunctive relief to prohibit alleged harassment or abuse by NDOC
10 correctional officers, that request would not be adequately supported.² There is no showing of a likelihood
11 of success on the merits. Further, it does not appear that Tagle has exhausted his administrative remedies
12 regarding the allegations that the guards or library supervisors are taking his mail and legal papers or
13 physically abusing him. Consequently, Tagle has not made a clear showing that injunctive relief is
14 appropriate.

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18 ² To qualify for a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of success on the
19 merits; (2) a likelihood of irreparable harm; (3) the balance of hardships favors the plaintiff; and (4) an
20 injunction is in the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
21 Alternatively, under the sliding scale approach, the plaintiff must demonstrate (1) serious questions on the
22 merits; (2) a likelihood of irreparable harm; (3) the balance of hardships tips sharply in the plaintiff's
23 favor; and (4) an injunction is in the public interest. *See Alliance for the Wild Rockies v. Cottrell*, 632
24 F.3d 1127, 1135 (9th Cir. 2011). In addition, in circumstances involving civil actions challenging prison
25 conditions, injunctive relief "must be narrowly drawn, extend no further than necessary to correct the harm
the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm."
18 U.S.C. § 3626(a)(2). The Court must give "substantial weight to any adverse impact on public safety
or the operation of a criminal justice system caused by the preliminary relief and shall respect the
principles of comity set out" in § 3626(a)(1)(B). *Id.* As an "extraordinary and drastic remedy," a
preliminary injunction should not be granted "unless the movant, by a clear showing, carries the burden
of persuasion." *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotation and emphasis omitted).

B. Defendants' Motion to Strike

On May 1, 2017, Tagle filed a motion entitled “Complaint in Regard: E-Mail & The People Who Handles It” (“Complaint”). *See* ECF No. 100. The Complaint is difficult to comprehend. Tagle appears to be alleging that various NDOC employees are restricting or inhibiting his ability to send and receive paper and electronic documents related to his court cases. For example, it states:

P. Feal confiscated my legal work, and “kept it to decided what should I have or not ... furthermore, her assistance who hands the E-mail has challenged court’s orders denying the Plaintiff with copies of documents filed or received by the court ... furthermore “adding” sheets / pages which Plaintiff did not send.

I've sent 4 complaints however, she chooses what to file and destroys the rest! ... reason why, plaintiff's requesting to this H. court to enforce the order of "Email – and copies" received or sent."

See ECF No. 100 at 2.³

Tagle also states that “[u]nder Clark Leslie’s orders, [Paulina] Simmons claimed ‘to be Plaintiff’s attorney,’ on record.” *Id.* at 1-2. Tagle then claims that “[s]he typed an ‘OP723 demanding access to my file … However, such ‘OP723 doesn’t exist, or NDOC’s authorized is only Simmons invention and applies only to [illegible word].’” *Id.*

The Defendants argue that the Court should strike Tagle's Complaint because it is a fugitive document filed without authority or a request for leave. *See* ECF No. 117 at 1. Tagle filed a Response to the Defendants' Motion to Strike in which he personally attacks Defendants' counsel rather than address the merits of their Motion. *See* ECF No. 119. The Response states that Deputy Attorney General Erin Albright—counsel for the Defendants—has no idea what she is doing and that it is “God’s miracle” she

³ The Court refers Tagle to NDOC Administrative Regulation 750 and 722. NDOC Admin. Reg. 750 lists the provisions and rules regarding inmate general correspondence and mail, including electronic mail service while NDOC Admin. Reg. 722 provides the provisions regarding inmate legal access.

1 has a job. *See* ECF No. 119 at 1. The Reply refers to Albright as a “cesspool” and pseudo attorney and
2 the Defendants as criminals. *Id.*

3 Federal Rule of Civil Procedure 12(f) provides that “[t]he court may strike from a pleading an
4 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P.
5 12(f). Additionally, district courts have the inherent power to control their own dockets, including the
6 power to strike items from the docket to address conduct that is improper but does not warrant dismissal.
7 *See Ready Transportation, Inc., v. AAR Manufacturing, Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (quoting
8 *Atchison, Topeka & Santa Fe Ry. v. Hercules, Inc.*, 146 F.3d 1071, 1074 (9th Cir. 1998)). The court may,
9 by extension, strike a document filed in violation of the Court’s local procedural rules. *Id.*; *see also Smith*
10 *v. Frank*, 923 F.3d 139, 142 (9th Cir. 1991) (“For violations of the local rules, sanctions may be imposed
11 including … striking the offending pleading.”). Courts, however, must construes the pleadings of *pro se*
12 litigants in civil rights cases liberally, affording them the benefit of the doubt. *See Karim-Panahi v. L.A.*
13 *Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988).

14 The Court grants the Defendants’ Motion to Strike Tagle’s Complaint. Tagle has filed duplicative
15 and repetitive requests for relief in this case and others. *See, e.g.*, 2:15-cv-02082-JCM-VCF; 2:15-cv-
16 00623-APG-GWF; 2:15-cv-02143-RFB-CWH. With Tagle’s history of duplicative and frivolous filings
17 in mind, the Court finds that the Complaint is a fugitive document.

18 Local Rule 7-2 of the Local Rules of Civil Practice permits the filing of a motion, a response, and
19 a reply. A document not allowed by LR 7-2, or otherwise permitted by order of this Court, is a fugitive
20 document and must be stricken from the record. *See Reiger v. Nevens*, 3:13-cv-00218-MMD, 2014 WL
21 537613, at *2 (D. Nev. Feb. 7, 2014). As the Defendants note, the Complaint “purports to provide a
22 synopsis of additional alleged constitutional violations committed by Defendants.” ECF No. 117 at 2.
23 But because it is “not a motion, response, reply or pleading,” the Defendants assert that the Complaint
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1 “violates both the Federal Rules of Civil Procedure and this Court’s Local Rules.” Further, LR 7-2(g)
2 states that “[a] party may not file supplemental pleadings, briefs, authorities, or evidence without leave of
3 court granted for good cause. The judge may strike supplemental filings made without leave of court.”
4 Tagle failed to request leave of Court to file his Motion. Thus, the Complaint is improper. Tagle’s *pro
5 se* status does not discharge his obligation to “abide by the rules of the court in which he litigates.” *See
6 Carter v. Commissioner of Internal Revenue*, 784 F.2d 1006, 1008 (9th Cir. 1986).

7 The Court also grants the Defendants’ motion to strike to further the overall resolution of this
8 action. *Hart v. Baca*, 204 F.R.D. 456, 457 (C. D. Cal. 2001) (holding that a court may grant a motion to
9 strike if doing so “may have the effect of making the trial of the action less complicated, or have the effect
10 of otherwise streamlining the ultimate resolution of the action.”). Tagle’s excessive and repetitive filings
11 have slowed and complicated proceedings in this action. The Court finds that granting the Defendants’
12 motion to strike will make this action less complicated, and streamline the ultimate resolution of this
13 action.

14 ACCORDINGLY, and for good cause shown,

15 IT IS ORDERED that Tagle’s Motion for Issue of Summons on Record, Illegal Confiscation of
16 Documents / Exhibits Physical / Emotional Stress Inflicted on Plaintiff due to Retaliation (ECF No. 116)
17 is DENIED.

18 IT IS FURTHER ORDERED that the Defendants’ Motion to Strike [ECF No. 117] Tagle’s
19 Complaint in Regard: E-Mail & The People Who Handles It (ECF No. 100) is GRANTED.

20 **NOTICE**

21 Under Local Rule IB 3-1, any objection to this Order must be in writing and filed with the Clerk
22 of the Court within 14 days after service of the Order. The Supreme Court has held that the courts of
23 appeal may determine that an appeal has been waived due to the failure to file objections within the
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1 specified time. *See Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that
2 (1) failure to file objections within the specified time and (2) failure to properly address and brief the
3 objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from
4 the order of the District Court. *See Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

5 DATED this 1st day of June, 2017.

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8 CAM FERENBACH
9 UNITED STATES MAGISTRATE JUDGE
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